

**State of California
Office of Administrative Law**

In re:
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 2927, 3014

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11353

OAL Matter Number: 2022-0311-03

OAL Matter Type: Regular (S)

This action adopts the State Policy for Water Quality Control: Toxicity Provisions as a state policy for water quality control for all inland surface waters, enclosed bays, estuaries, and coastal lagoons of the state, and for inclusion in the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of the United States.

OAL approves this regulatory action pursuant to section 11353 of the Government Code.

Date: April 25, 2022



**Mark Storm
Senior Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Eileen Sobeck, Executive
Director**

Copy: Zane Poulson

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

STD. 400 (REV. 10/2019)

For use by Secretary of State only

ENDORSED - FILED in the office of the Secretary of State of the State of California

APR 25 2022

Received at 1:43pm

OAL FILE NUMBERS, NOTICE FILE NUMBER Z-, REGULATORY ACTION NUMBER 2022-0311-035, EMERGENCY NUMBER, For use by Office of Administrative Law (OAL) only, OAL RECEIVED 2022 MAR 11 PM 3:26

AGENCY WITH RULEMAKING AUTHORITY State Water Resources Control Board, AGENCY FILE NUMBER (If any) No. 2020-0044 and 2021-0044

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE, TITLE(S), FIRST SECTION AFFECTED, 2. REQUESTED PUBLICATION DATE, 3. NOTICE TYPE, 4. AGENCY CONTACT PERSON, TELEPHONE NUMBER, FAX NUMBER (Optional), OAL USE ONLY, ACTION ON PROPOSED NOTICE, NOTICE REGISTER NUMBER, PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Toxicity Provisions, 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related), SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.), TITLE(S) 23, ADOPT Title 23, Division 3, Chapter 22, section 2927 and Title 23, Division 3, Chapter 23, section 3014, AMEND, REPEAL

3. TYPE OF FILING, Regular Rulemaking (Gov. Code §11346), Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4), Emergency (Gov. Code, §11346.1(b)), Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute., Emergency Readopt (Gov. Code, §11346.1(h)), Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100), File & Print, Print Only, Other (Specify) Govt Code section 11353

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)), Effective on filing with Secretary of State, \$100 Changes Without Regulatory Effect, Effective other (Specify) Upon OAL Approval (Govt Code 11353)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY Department of Finance (Form STD. 399) (SAM §6660), Fair Political Practices Commission, State Fire Marshal, Other (Specify) United States Environmental Protection Agency review and approval subsequent to OAL approval

7. CONTACT PERSON Zane Poulson, TELEPHONE NUMBER (916) 341-5488, FAX NUMBER (Optional), E-MAIL ADDRESS (Optional) zane.poulson@waterboards.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only, ENDORSED APPROVED, APR 25 2022, Office of Administrative Law

SIGNATURE OF AGENCY HEAD OR DESIGNEE, DATE 3/8/2022, TYPED NAME AND TITLE OF SIGNATORY Karen Mogus, Deputy Director, Division of Water Quality

Concise Summary of Regulatory Provisions

TITLE 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 22. State Policy for Water Quality Control

§ 2927 State Policy for Water Quality Control: Toxicity Provisions

AND

TITLE 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 23. Water Quality Control Plans

§ 3014 Amendment to the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California: Toxicity Provisions

The following section 2927 and section 3014 is to be added to Title 23 of the California Code of Regulations:

On December 1, 2020, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2020-0044. On October 5, 2021, the State Water Board adopted Resolution No. 2021-0044. Collectively, these resolutions adopted the State Policy for Water Quality Control: Toxicity Provisions (referred to as the Toxicity Provisions) as a state policy for water quality control for all inland surface waters, enclosed bays, estuaries, and coastal lagoons of the state, and also for inclusion in the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California for waters of the United States.

The primary goal of the Toxicity Provisions is to provide consistent protection of aquatic life beneficial uses in all inland surface waters, enclosed bays, estuaries, and coastal lagoons of the state from the effects of toxicity. The Toxicity Provisions supersede any conflicting provisions in regional water quality control plans. The Toxicity Provisions include: 1) numeric water quality objectives for both chronic and acute aquatic toxicity that are expressed as a null hypothesis and alternative hypothesis and incorporate regulatory management decisions that represent the allowable error rates and thresholds that would result in an unacceptable risk to aquatic life, 2) requirements to use the Test of Significant Toxicity statistical approach for analyzing aquatic toxicity test data, and 3) a program of implementation to control toxicity in discharges and achieve, maintain, and protect aquatic life beneficial uses and water quality objectives. The main components of the program of implementation include specific requirements for species sensitivity screening, reasonable potential analysis, effluent limitations and targets, monitoring frequencies, and toxicity reduction evaluations.